IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

MFA.No. 1044 of 2001()

OPMV.1910/1994 of ADDL.MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA
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APPELLANT:

K.R.Venugopal, Kalarikkal Veli, Avalookunnu P.O., Alappuzha.

BY ADV. SRI.M.V.MATHEW

RESPONDENTS:
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1. A.Noushad, S/o. Azeez, Chiyamveli, Mannanchery P.O., Alappuzha.

2. P.H. Basheer Ahammed, S/o. P.Y. Ahammed, Hazeena Manzil, Avalookunnu P.O., Alappuzha.

3. The Branch Manager, New India Assurance Co. Ltd., Kottakkal Aryavaidyasala Building, Palace Ward, Alappuzha.

BY ADV. SRI.SOORAJ ELANJICKAL
SRI.E.RAFEEK FOR R2

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 22/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & V. Giri, JJ.

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M.F.A.No.1044 of 2001

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Dated this the 22nd day of August, 2007.

JUDGMENT

Giri,J.

Claimant, who suffered serious injuries in a road accident that took place on 23.7.1994, challenges the award passed by the Tribunal dissatisfied with the quantum of compensation awarded in his favour. The accident took place when he was pedalling a bicycle along the Thanneermukkom - Alappuzha road. He was knocked down by a bus driven by the second respondent and owned by the first respondent. The Tribunal found valid insurance police coverage by the third respondent. The claimant was found to be entitled to an amount of Rs.71,500/- as just and reasonable compensation for the injury and disability suffered by him. It is the quantum which is under challenge in this appeal.

2. The accident took place on 23.7.1994. The claimant was hospitalised, in the first instance for the period from 23.7.1994 to 17.9.1994. The nature of the injuries and the treatment that the claimant had undergone is discussed by the Tribunal as follows:

> "Ext.A3 wound certificate would show that petitioner had abrasion 10 x 10 cm iliac crest and blunt injury abdomen. Ext.A4 is the discharge certificate. It would show that petitioner was inpatient at Medical College Hospital, Alappuzha from 23.7.94 to 17.9.94. It would also show that at the time of admission petitioner had haemoperitonium with perforation sigmoid and rectum. He had fracture pelvis with superior and inferior public ramus left side with proximal migration of the ileum on the left side. He had sciatic nerve palsy of left side. After surgical management he was taken over to Ortho side where he was treated with skeletal traction to correct the proximal migration of the ileum. It was continued for 3 weeks followed by skin traction and foot drop splint and it was seen that the petitioner was discharged on relief with advise to continue medicines. Ext.A5 would show that on 18.5.94 petitioner had been to the Medical College Hospital with pain and weakness over the left leg and right shoulder. Some medicines were seen prescribed. Ext.A5(a) is an outpatient slip dated

> 15.12.94. It would show that on that day the petitioner had been to the Medical College Hospital with back ache, pain right shoulder, abdomen, weakness of left leg and the petitioner was advised to have medicines. Ext.A6 is a disability certificate issued by Orthopedic Surgeon certifying that the petitioner had shortening of left lower limb by one inch, whasting of thigh ands leg muscles with persistent numbness over the right gluteal region and left leg below knee, weakness of left lower limb."

The Tribunal had noted that the Orthopedic Surgeon who issued Ext.A6 disability certificate had assessed the permanent disability suffered by the petitioner at 25%. The Tribunal had determined the permanent disability at 20%, at variance from what was assessed by the Orthopedic Surgeon. Reason given by the Tribunal in this regard was non-examination of the Doctor, who issued Ext.A6 certificate. In the facts and circumstances of the case, we concur with the finding of the Tribunal as regards the assessment of the disability at 20%.

3. But in so far as the determination of the monthly income of the claimant is concerned, we note that the claimant was admittedly a Tailor. He was 39 years old at the time of the

accident. The Tribunal had assessed a monthly income of only Rs.1,500/-. We feel that this is too low considering the fact that the accident took place in 1994. The claimant was maintaining a family and he was aged 39 at the time of the accident. We assess the monthly income as Rs.2,500/-. The Tribunal had correctly adopted a multiplier of 15. If so, the compensation for disability and loss of earning power, adopting a disability of 20% would be Rs.90,000/- (2500 x 12 x 15 x 20/100). The Tribunal had awarded an amount of Rs.54,000/- under this head. The claimant would therefore be entitled to a further sum of Rs.36,000/- as compensation for disability and loss of earning power.

4. Since we have taken the monthly income of the claimant at Rs.2,500/- and since the claimant was either hospitalised or had undergone medical treatment for at least four months, we find that he is entitled to Rs.10,000/- towards actual loss of earnings. The Tribunal had awarded an amount of Rs.6,000/- under this head and therefore, the claimant is entitled to an additional compensation of Rs.4,000/- towards loss of earnings.

5. As noted above, the claimant was hospitalised on more

than one occasion. He was hospitalised for almost two months immediately after the accident. The Tribunal also noticed that he had to be taken to the hospital even thereafter. The Tribunal proceeded to award an amount of Rs.5,000/- alone as compensation for treatment expenses. We are of the view, this is inadequate, especially taking note of the fact that future medical expenses is inevitable in a case like the present one. We find that the claimant is entitled to a further amount of Rs.5,000/- towards medical expenses.

6. Though it was argued that the compensation awarded under the other heads of damages is also low, we are not inclined to accept the same.

7. In the result, the appeal is allowed in part. The claimant is found entitled to a further amount of Rs.45,000/- as compensation. The third respondent - Insurance Company is directed to deposit the same in the court below with 7.5% interest from the date of petition till the date of deposit. Since the accident had taken place in 1994, the claimant is permitted to withdraw the amount.

The appeal is disposed of on the above terms. There will be no order as to costs.

J.B.Koshy,
Judge.

V.Giri,
Judge.

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